



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:	)	
	)	
	)	ISCR Case No. 07-08640
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: James F. Duffy, Esq. Department Counsel  
For Applicant: Pro se

September 19, 2008

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**Decision**

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MASON, Paul J., Administrative Judge:

Applicant submitted his Security Clearance Application (SCA), on November 24, 2006. On May 12, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under drug use (Guideline H), and personal conduct (Guideline E). The action was taken pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant's undated answer to the SOR was received on or about June 13, 2008. DOHA issued a notice of hearing on July 28, 2008, and the hearing was held on August 14, 2008. At the hearing, three exhibits (GE 1 through GE 3) were admitted in evidence without objection to support the government's case. Applicant testified. After the hearing, Applicant submitted character evidence from a former supervisor and current coworkers. On August 19 and August 22, 2008, the government indicated no objection

to these exhibits being admitted in evidence. Department DOHA obtained a copy of the hearing transcript on August 20, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

## **FINDINGS OF FACT**

The SOR contains one allegation under the drug involvement guideline, and two allegations under the personal conduct guideline. Applicant admitted all allegations.

Applicant is 27 years old, single, with no children. He graduated from high school in June 2000, and attended college for one semester. He has been working as a material handler for his current employer since September 2005. He handles incoming shipping items, assists in x-raying items that are transported into and around the facility, and monitors items that leave the facility. He seeks a security clearance.

### **Drug Involvement**

Applicant began using marijuana in 2001 when he was 19 years old. His marijuana use ended in late 2004 or early 2005. He provided his marijuana history in answers to interrogatories (GE 2, September 2006) and answers to interrogatories (GE 3, October 2007) Curiosity and peer pressure were the two primary reasons he used the drug about once a week either with friends or alone over a four-year period. He occasionally purchased \$5.00 worth of the drug wrapped in cigarette papers. The largest quantity he ever purchased was \$10.00 worth wrapped in two sets of cigarette papers. Applicant never used any other illegal drug or misused any prescription drug.

Fear of testing positive after a job-related, random drug test was one of the reasons Applicant discontinued marijuana use. He also decided he did not want drug use to be a part of his future. Finally, he realized he wanted more financial stability in his future. In recent years, he obtained several high-interest loans from money lending businesses (not banks) to help a relative pay attorney fees for an appeal of a personal injury case.

Applicant has not used marijuana or any other drug since late 2004 or early 2005, and has no intention of using any drug in the future. He no longer associates with those friends who used marijuana with him more than three years ago.

### **Personal Conduct**

On November 24, 2006, Applicant certified that the information he provided in his security clearance application (SCA) was true and made in good faith. (GE 1, SCA, certification section located just ahead of Applicant's signature) Yet, in response to question 24 a., requiring information about drug use since the age of 16 or in the last 7 years, Applicant answered "No," even though he used marijuana about once a week between 2001 and late 2004 or early 2005. He initially characterized the omission as a mistake at the hearing. But, he knew he was hiding four years of marijuana use with his

“No” answer to question 24 a. He answered “No” to question 24 a. because he believed that telling the truth would spoil his chances of receiving a security clearance.

### **Character Evidence**

Applicant’s supervisor for an unknown at his present employer wrote a character statement indicating that Applicant is dependable and hardworking. Applicant submitted a set of performance objectives for 2008. The exhibit does not show Applicant’s performance ratings for the past three years. In a character statement provided by the team leader (who signed the 2008 performance objectives), she indicated she worked with Applicant on a daily basis, and found him to be a team player that follows directions. Over the past three years, Applicant has always demonstrated professionalism to the property officer, while two other coworkers, who have known Applicant for about nine months, recommend him for a position of trust.

### **POLICIES**

When evaluating an applicant’s suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant’s eligibility for access to classified information.

These guidelines are flexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge’s ultimate adjudicative goal is a fair, impartial and common sense decision. According to the AG, the entire process is a careful, thorough evaluation of a number of variables known as the “whole person concept.” The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2b. requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship is not restricted to normal duty hours. Rather, the relationship is an around-the-clock responsibility between an applicant and the federal government. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

### **Drug Involvement (DI)**

Drug Involvement casts doubt on a person's willingness to comply with security rules and regulations.

### **Personal Conduct (PC)**

Providing dishonest or incomplete information during a security investigation demonstrates poor judgment.

## **ANALYSIS**

### **Drug Involvement (DI)**

24. *The Concern.* "Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules or regulations."

Applicant's drug involvement falls within the scope of DI disqualifying condition (DC) 25.a. (*any drug abuse*) and DI DC 24.c. (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia*) based on Applicant's marijuana use, purchase, and possession of materials to ingest the drug. Applicant used the drug on a weekly basis for more than four years. He purchased the drug in \$5.00 and \$10.00 increments. It is reasonable to assume he liked the drug's effect as he occasionally used the drug by himself, or away from the influence of peers. Finally, he used drug paraphernalia (papers).

The first two DI mitigating conditions are potentially applicable to circumstances of this case. The passage of almost four years affords a sufficient basis to apply DI mitigating condition (MC) 26.a. (*the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*) in his favor. The passage of time coupled with Applicant's credible statements and testimony about changing his life convince me that his past drug use will not recur. DI MC 26.b. ((1) *disassociation from drug-using associates and contacts*, (3) *an appropriate period of*

*abstinence*) applies to Applicant's decision to sever his ties with his drug using friends, combined with the passage of almost four years of abstinence. The DI guideline is resolved in Applicant's favor.

### **Personal Conduct (PC)**

15. *The Concern.* "Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process."

Deliberate as opposed to unintentional omissions of material information are cognizable under the PC guideline. Examples of unintentional omissions are those that occur through haste, oversight or misunderstanding the question.

Applicant's deliberate falsification of his SCA in November 2006 falls within the ambit of PC DC 16.a. (*deliberate omission or falsification of relevant facts from any personnel security questionnaire to determine security clearance eligibility or trustworthiness*) Based on Applicant's initial testimony at the hearing indicating the omission was a mistake, PC DC 16.b. (*deliberately providing false or misleading information concerning relevant facts to an investigator or other official government representative*) could be applied to interpret Applicant's mistake explanation as really a second attempt to conceal his history of marijuana use. However, I do not believe Applicant was trying to conceal his marijuana use, given the detailed account he provided of his marijuana history in GE 2, and GE 3, and the generally credible nature of Applicant's testimony.

There are four mitigating conditions (MC) that are potentially applicable to the circumstances in this case. Those conditions are: PC MC 17.a. (*the individual made prompt, good-faith efforts to correct the omission, concealment or falsification, before being confronted with the facts*); PC MC 17.c. (*the offense was so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*); and, PC MC 17.d. (*the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate stressors, circumstances, or factors that caused untrustworthy, unreliable or other inappropriate behavior, and such behavior is unlikely to recur*).

PC MC 17.a. is not applicable as Applicant did not make efforts to provide the full scope of his drug history until he was asked about his drug use by the investigator in September 2006. However, PC MC 17.c. and PC MC 17.d. are applicable because Applicant's deliberate falsification occurred only once, even though the falsification occurred less than 16 months before the hearing. Within the last three and closer to four

years, Applicant admitted the illegality of his drug use and stopped using marijuana, he discontinued his ties with his drug using friends, and developed a good work reputation because of his trustworthiness and reliability. The PC guideline is found for Applicant.

### **Whole Person Concept (WPC)**

The AG indicates the ultimate determination of whether to grant a security clearance must be an overall common sense judgment based upon careful consideration of the whole person concept. Nine general policy factors define the WPC. They are: (1) the nature, extent and seriousness of the conduct; (2) the circumstances surrounding the conduct to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) extent to which the participation is voluntary; (6) the presence or absence of rehabilitation; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and, (9) the likelihood of continuation or recurrence.

Peer pressure is a potent influence on most teenagers and young adults. However, Applicant continued to regularly use marijuana until he was 23. He purchased the drug occasionally. Though he stopped using marijuana in late 2004 or early 2005, he deliberately concealed his drug history from his SCA in November 2006. Weighing against the deliberate falsification that occurred less than 16 months ago is the favorable evidence persuading me Applicant will not repeat this adverse conduct in the future. In late 2004 or early 2005, Applicant stopped using marijuana driven by a concern for his future. He did not want to be caught by a drug test and potentially lose his job. He stopped associating with drug users. The character evidence reflects he has established a good employment record since September 2005. His coworkers applaud his professionalism and dependability. He has taken remedial action in paying off the expensive, high-interest loans. Having weighed and balanced all the evidence, Applicant has met his ultimate burden of persuasion under the DI and PC guidelines.

### **FORMAL FINDINGS**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1 (Drug Involvement, Guideline H): FOR APPLICANT

Subparagraph 1.a.	For Applicant
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Paragraph 2 (Personal Conduct, Guideline E): FOR APPLICANT

Subparagraph 2.a.	For Applicant
Subparagraph 2.b.	For Applicant

## **CONCLUSION**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Paul J. Mason  
Administrative Judge